

IOWA DISTRICT COURT IN AND FOR BREMER COUNTY

MARLENE MAUER,) Case No. LACV 005874
vs.)
Plaintiff,) PETITION AT LAW
ICON HEALTH AND FITNESS, INC.;)
SEARS, ROEBUCK AND CO.)
a/k/a SEARS d/b/a SEARS CROSSROADS)
CENTER STORE #1072; AND SEARS)
HOME SERVICES, L.L.C.,)
Defendants.)

COMES NOW Plaintiff, Marlene Mauer, and for her cause of action against Defendants, Icon Health and Fitness, Inc.; Sears, Roebuck and Co. a/k/a Sears, d/b/a Sears Crossroads Center Store #1072; and Sears Home Services, L.L.C., states:

GENERAL ALLEGATIONS

1. Plaintiff, Marlene Mauer, is a resident of Denver, Bremer County, Iowa.
2. Defendant Icon Health and Fitness, Inc. is a Delaware corporation doing business in Iowa with its principal place of business in Logan, Utah.
3. Defendant Sears, Roebuck and Co. is a New York corporation registered to do business in the State of Iowa with its principal place of business in Hoffman Estates, Illinois.
4. Sears Crossroads Center store #1072 is a Sears Store owned by Sears, Roebuck and Co. and located in Waterloo, Black Hawk County, Iowa.
5. Sears Home Services, L.L.C. is a Delaware corporation wholly owned by Sears, Roebuck and Co. that provides services for the repair of products sold by Sears within the State of Iowa.

6. On May 28, 2015, Marlene Mauer purchased a Pro Form Cross Walk Fit 415 Treadmill Model SKU24H53.0; Serial No: FF740C10917 from Sears Crossroads Center store #1072.
7. The Pro Form Cross Walk Fit 415 Treadmill Model SKU24H53.0; Serial No: FF740C10917 was manufactured and marketed by ICON Health & Fitness, Inc.
8. On January 24, 2016, while Mrs. Mauer was walking on the treadmill at her home in Denver, Bremer County, Iowa, the treadmill suddenly, and without warning, sped up causing her to fall.
9. As a result of the fall Mrs. Mauer suffered personal injuries including, but not limited to, past and future pain and suffering, past and future medical bills, and past and future loss of function.
10. The damages suffered by Mrs. Mauer exceed the damage limitations of small claims court and are within the jurisdiction of the Iowa District Court.
11. Bremer County, Iowa, as the place of injury, is the appropriate venue for this claim.

COUNT I

ICON HEALTH & FITNESS, INC.

PRODUCTS LIABILITY

12. Plaintiff repleads her allegations set forth in paragraphs 1-11 of her Petition as if fully set forth herein.
13. ICON Health & Fitness, Inc. is in the business of manufacturing, selling, marketing, or otherwise distributing the Pro Form Cross Walk Fit 415 Treadmill Model SKU24H53.0; Serial No: FF740C10917.

14. At the time of the sale or distribution of the product, and at the time Plaintiff purchased the product, the product was defective in that:

- a. A manufacturing defect caused the treadmill to suddenly, and without warning, speed up creating a fall hazard.
- b. A manufacturing defect prevented the treadmill from stopping immediately upon treadmill malfunction creating a fall hazard.
- c. A design defect caused the treadmill to suddenly, and without warning, speed up creating a fall hazard.
- d. A design defect prevented the treadmill from stopping immediately upon treadmill malfunction creating a fall hazard.
- e. There was insufficient or improper inspection of the treadmill before putting it in the stream of commerce.
- f. There was no warning provided to the consumer that the treadmill might suddenly, and without warning, speed up causing a fall hazard.

15. As a result of the product defects Plaintiff suffered personal injury and damages.

16. At the time of suffering her injuries Plaintiff was using the Pro Form Cross Walk Fit 415 Treadmill for the purpose it was designed and manufactured.

17. Defendant ICON Health & Fitness, Inc. is liable to Plaintiff for manufacturing, selling, marketing, or otherwise distributing the Pro Form Cross Walk Fit 415 Treadmill in a defective condition.

WHEREFORE Plaintiff, Marlene Mauer, prays the Court to enter judgment against Defendant ICON Health & Fitness, Inc. in an amount sufficient to compensate her for her personal injuries and damages plus interest and costs as allowed by law.

COUNT II

ICON HEALTH & FITNESS, INC.

BREACH OF WARRANTY

18. Plaintiff repleads her allegations set forth in paragraphs 1-14 of her Petition as if fully set forth herein.
19. Because of the defects to the Pro Form Cross Walk Fit 415 Treadmill, the treadmill was not fit for the ordinary purpose for which the product was designed and manufactured to be used.
20. Defendant ICON Health & Fitness, Inc. breached its implied warranty regarding the merchantability of the treadmill.
21. As a result of the breach of warranty of merchantability Plaintiff suffered personal injury and damages.
22. Defendant ICON Health & Fitness, Inc. is liable to Plaintiff for manufacturing, selling, marketing, or otherwise distributing the Pro Form Cross Walk Fit 415 Treadmill in a defective condition that breached its warranty of merchantability.
WHEREFORE Plaintiff, Marlene Mauer, prays the Court to enter judgment against Defendant ICON Health & Fitness, Inc. in an amount sufficient to compensate her for her personal injuries and damages plus interest and costs as allowed by law.

COUNT III

ICON HEALTH & FITNESS, INC.

NEGLIGENCE

23. Plaintiff repleads her allegations set forth in paragraphs 1-14 of her Petition as if fully set forth herein.

24. Defendant ICON Health & Fitness, Inc. was negligent in one or more of the following particulars:

- a. The design of the Pro Form Cross Walk Fit 415 Treadmill Model SKU24H53.0; Serial No: FF740C10917.
- b. The manufacture of the Pro Form Cross Walk Fit 415 Treadmill Model SKU24H53.0; Serial No: FF740C10917.
- c. The inspection of the Pro Form Cross Walk Fit 415 Treadmill Model SKU24H53.0; Serial No: FF740C10917.
- d. The provision of warnings concerning the Pro Form Cross Walk Fit 415 Treadmill Model SKU24H53.0; Serial No: FF740C10917.

25. As a result of the negligence of ICON Defendant Health & Fitness, Inc., Plaintiff suffered personal injury and damages.

WHEREFORE Plaintiff, Marlene Mauer, prays the court to enter judgment against Defendant ICON Health & Fitness, Inc. in an amount sufficient to compensate her for her personal injuries and damages plus interest and costs as allowed by law.

COUNT IV

SEARS, ROEBUCK AND CO. A/K/A SEARS, D/B/A SEARS CROSSROADS
CENTER STORE #1072
PRODUCTS LIABILITY

26. Plaintiff repleads her allegations set forth in paragraphs 1-11 of her Petition as if fully set forth herein.

27. Sears, Roebuck and Co. a/k/a Sears, d/b/a Sears Crossroads Center Store #1072 is in the business of assembling, selling, marketing, or otherwise distributing the Pro

Form Cross Walk Fit 415 Treadmill Model SKU24H53.0; Serial No:

FF740C10917.

28. At the time of the sale or distribution of the product, and at the time Plaintiff purchased the product, the product was defective because:

- a. A manufacturing defect caused the treadmill to suddenly, and without warning, speed up creating a fall hazard.
- b. A manufacturing defect prevented the treadmill from stopping immediately upon treadmill malfunction creating a fall hazard.
- c. A design defect caused the treadmill to suddenly, and without warning, speed up creating a fall hazard.
- d. A design defect prevented the treadmill from stopping immediately upon treadmill malfunction creating a fall hazard.
- e. There was insufficient or improper inspection of the treadmill before putting it in the stream of commerce.
- f. There was no warning provided to the consumer that the treadmill might suddenly, and without warning, speed up causing a fall hazard.
- g. There was insufficient or improper assembly of the treadmill before it was put into the stream of commerce.

29. As a result of the product defects Plaintiff suffered personal injury and damages.

30. At the time of suffering her injuries Plaintiff was using the Pro Form Cross Walk Fit 415 Treadmill for the purpose it was designed and manufactured.

31. Defendant Sears, Roebuck and Co. a/k/a Sears, d/b/a Sears Crossroads Center Store #1072 is liable to Plaintiff for assembling, selling, marketing, or otherwise distributing the Pro Form Cross Walk Fit 415 Treadmill in a defective condition.

WHEREFORE Plaintiff, Marlene Mauer, prays the court to enter judgment against Defendant Sears, Roebuck and Co. a/k/a Sears, d/b/a Sears Crossroads Center Store #1072 in an amount sufficient to compensate her for her personal injuries and damages plus interest and costs as allowed by law.

COUNT V

SEARS, ROEBUCK AND CO. A/K/A SEARS, D/B/A SEARS CROSSROADS
CENTER STORE #1072

BREACH OF WARRANTY

32. Plaintiff repleads her allegations set forth in paragraphs 1-11 of her Petition as if fully set forth herein.

33. Sears, Roebuck and Co. a/k/a Sears, d/b/a Sears Crossroads Center Store #1072 is in the business of assembling, selling, marketing, or otherwise distributing the Pro Form Cross Walk Fit 415 Treadmill Model SKU24HS3.0; Serial No: FF740C10917.

34. At the time of the sale or distribution of the product, and at the time Plaintiff purchased, the product the product was defective because:

- a. A manufacturing defect caused the treadmill to suddenly, and without warning, speed up creating a fall hazard.
- b. A manufacturing defect prevented the treadmill from stopping immediately upon treadmill malfunction creating a fall hazard.

- c. A design defect caused the treadmill to suddenly, and without warning, speed up creating a fall hazard.
- d. A design defect prevented the treadmill from stopping immediately upon treadmill malfunction creating a fall hazard.
- e. There was insufficient or improper inspection of the treadmill before putting it in the stream of commerce.
- f. There was no warning provided to the consumer that the treadmill might suddenly, and without warning, speed up causing a fall hazard.
- g. There was insufficient or improper assembly of the treadmill before it was put into the stream of commerce.

35. Because of the defects to the Pro Form Cross Walk Fit 415 Treadmill at the time of purchase by Plaintiff, the treadmill was not fit for the ordinary purpose for which the product was designed and manufactured to be used and Defendant, Sears, Roebuck and Co. a/k/a Sears, d/b/a Sears Crossroads Center Store #1072, breached its implied warranty regarding the merchantability of the treadmill.

36. At the time of sale of the Pro Form Cross Walk Fit 415 Treadmill Defendant, Sears, Roebuck and Co. a/k/a Sears, d/b/a Sears Crossroads Center Store #1072, knew of the particular purpose for which Plaintiff purchased the treadmill, specifically for the use by her and her husband as a treadmill for exercise.

37. At the time of sale of the Pro Form Cross Walk Fit 415 Treadmill Defendant, Sears, Roebuck and Co. a/k/a Sears, d/b/a Sears Crossroads Center Store #1072, knew that Plaintiff was relying on Defendant's skill or judgment to select or furnish suitable goods.

38. The product was not fit for the particular purpose for which Plaintiff purchased the product.
39. As a result of the breach of warranties of merchantability and for fitness for a particular purpose Plaintiff suffered personal injury and damages.
40. Defendant, Sears, Roebuck and Co. a/k/a Sears, d/b/a Sears Crossroads Center Store #1072, is liable to Plaintiff for assembling, selling, marketing, or otherwise distributing the Pro Form Cross Walk Fit 415 Treadmill in a defective condition that breached its warranties of merchantability and of fitness for a particular purpose.

WHEREFORE Plaintiff, Marlene Mauer, prays the court to enter judgment against Defendant Sears, Roebuck and Co. a/k/a Sears, d/b/a Sears Crossroads Center Store #1072 in an amount sufficient to compensate her for her personal injuries and damages plus interest and costs as allowed by law.

COUNT VI

SEARS, ROEBUCK AND CO. A/K/A SEARS, D/B/A SEARS CROSSROADS
CENTER STORE #1072

NEGLIGENCE

41. Plaintiff repleads her allegations set forth in paragraphs 1-11 of her Petition as if fully set forth herein.
42. Sears, Roebuck and Co. a/k/a Sears, d/b/a Sears Crossroads Center Store #1072 is in the business of assembling, selling, marketing, or otherwise distributing the Pro Form Cross Walk Fit 415 Treadmill Model SKU24H53.0; Serial No: FF740C10917.

43. At the time of the sale or distribution of the product, and at the time Plaintiff purchased, the product the product was defective because:

- a. A manufacturing defect caused the treadmill to suddenly, and without warning, speed up creating a fall hazard.
- b. A manufacturing defect prevented the treadmill from stopping immediately upon treadmill malfunction creating a fall hazard.
- c. A design defect caused the treadmill to suddenly, and without warning, speed up creating a fall hazard.
- d. A design defect prevented the treadmill from stopping immediately upon treadmill malfunction creating a fall hazard.
- e. There was insufficient or improper inspection of the treadmill before putting it in the stream of commerce.
- f. There was no warning provided to the consumer that the treadmill might suddenly, and without warning, speed up causing a fall hazard.
- g. There was insufficient or improper assembly of the treadmill before it was put into the stream of commerce.

44. Defendant Sears, Roebuck and Co. a/k/a Sears, d/b/a Sears Crossroads Center

Store #1072 was negligent in one or more of the following particulars:

- a. The improper assembly of the Pro Form Cross Walk Fit 415 Treadmill Model SKU24H53.0; Serial No: FF740C10917.
- b. The improper inspection of the Pro Form Cross Walk Fit 415 Treadmill Model SKU24H53.0; Serial No: FF740C10917.

- c. The failure to provide appropriate warnings concerning the Pro Form Cross Walk Fit 415 Treadmill Model SKU24H53.0; Serial No: FF740C10917.
- d. Selling a product they knew or should have known was defectively designed or manufactured.
- e. Selling a product that they knew or should have known had defective warnings.

45. As a result of the negligence of Defendant Sears, Roebuck and Co. a/k/a Sears, d/b/a Sears Crossroads Center Store #1072, Plaintiff suffered personal injury and damages.

WHEREFORE Plaintiff, Marlene Mauer, prays the court to enter judgment against Defendant Sears, Roebuck and Co. a/k/a Sears, d/b/a Sears Crossroads Center Store #1072 in an amount sufficient to compensate her for her personal injuries and damages plus interest and costs as allowed by law.

COUNT VII

SEARS HOME SERVICES, L.L.C.

NEGLIGENCE

46. Plaintiff repleads her allegations set forth in paragraphs 1-11 of her Petition as if fully set forth herein.

47. Defendant Sears Home Services, L.L.C., is in the business of servicing and repairing products sold by Defendant Sears, Roebuck and Co. a/k/a Sears, d/b/a Sears Crossroads Center Store #1072, including but not limited to, the Pro Form Cross Walk Fit 415 Treadmill Model SKU24H53.0.

48. On June 16, 2015, Sears Home Services, L.L.C. made a service call to Plaintiff's home after the treadmill unexpectedly sped up causing Plaintiff to fall from the treadmill.

49. Defendant, Sears Home Services, L.L.C., was negligent in the repairs made on June 16, 2015.

50. The negligence of Defendant Sears Home Services, L.L.C., in performing the repairs on June 16, 2015, was a cause of the treadmill unexpectedly speeding up on January 24, 2016.

51. As a result of the negligence of Defendant Sears Home Services, L.L.C., Plaintiff suffered personal injury and damages.

WHEREFORE Plaintiff, Marlene Mauer, prays the court to enter judgment against Defendant Sears Home Services, L.L.C. in an amount sufficient to compensate her for her personal injuries and damages plus interest and costs as allowed by law.

Respectfully Submitted,

SWISHER & COHRT, P.L.C.

By:

Samuel C. Anderson

AT0000461

528 West 4th Street

P. O. Box 1200

Waterloo, IA 50704-1200

Telephone: (319) 232-6555

Faxsimile: (319) 232-4835

E-mail: sanderson@s-c-law.com

Attorneys for Plaintiff

Original Filed.



TO: Legal Operations B6-260B
Sears Holdings Corporation
Legal Operations - Law Department, 3333 Beverly Road, # B6-260B
Hoffman Estates, IL 60179-0001

RE: **Process Served in Iowa**

FOR: Sears, Roebuck and Co. (Domestic State: NY)

Service of Process

Transmittal

01/09/2018

CT Log Number 532588671

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Marlene Mauer, Pltf. vs. Icon Health and Fitness, Inc., et al., Dfts. // To: Sears, Roebuck and Co., etc.

DOCUMENT(S) SERVED: Notice(s), Letter(s), Petition

COURT/AGENCY: BREMER COUNTY - DISTRICT COURT, IA
Case # LACV005874

NATURE OF ACTION: Product Liability Litigation - Personal Injury - Pro Form Cross Walk Fit 415 Treadmill - Model: SKU24H53.0

ON WHOM PROCESS WAS SERVED: C T Corporation System, Des Moines, IA

DATE AND HOUR OF SERVICE: By Process Server on 01/09/2018 at 09:05

JURISDICTION SERVED : Iowa

APPEARANCE OR ANSWER DUE: Within 60 days

ATTORNEY(S) / SENDER(S): Samuel C. Anderson
Swisher & Cohrt, P.L.C.
528 West 4th Street
P. O. Box 1200
Waterloo, IA 50704-1200
319-232-6555

ACTION ITEMS: CT has retained the current log, Retain Date: 01/09/2018, Expected Purge Date: 01/14/2018
Image SOP
Email Notification, Legal Operations B6-260B legalint@searshc.com

SIGNED:
ADDRESS: C T Corporation System
400 East Court Avenue
Suite 110
Des Moines, IA 50309

TELEPHONE: 602-277-4792

Page 1 of 1 / AJ

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

IOWA DISTRICT COURT IN AND FOR BREMER COUNTY

MARLENE MAUER,)	Case No. LACV005874
)	
Plaintiff,)	ORIGINAL NOTICE
)	
vs.)	
)	
ICON HEALTH AND FITNESS, INC.,)	
<u>SEARS, ROEBUCK AND CO.</u> ,)	
a/k/a SEARS d/b/a SEARS CROSSROADS)	
CENTER STORE #1072; AND SEARS)	
HOME SERVICES, L.L.C.,)	
)	
Defendants.)	

TO THE ABOVE-NAMED THIRD-PARTY DEFENDANT: Sears, Roebuck and Co.

YOU ARE HEREBY NOTIFIED that a Petition has been filed in the office of the Clerk of this Court naming you as a Defendant in this action. A copy of the Petition is attached to this Notice. The attorney for the Plaintiff is Samuel C. Anderson, whose address is 528 West Fourth Street, P.O. Box 1200, Waterloo, Iowa 50704. The attorneys' telephone number (319) 232-6555, facsimile number (319) 232-4835.

You must serve a Motion or Answer within sixty (60) days following the filing of this Notice with the Secretary of State of the State of Iowa, and within a reasonable time thereafter, file your Motion or Answer with the Clerk of Court for Bremer County, at the County Courthouse located at 415 E. Bremer Avenue, Waverly, Iowa 50677. If you do not, judgment by default may be rendered against you for the relief demanded in the Petition.

If you require the assistance of auxiliary aids or services to participate in court because of a disability, immediately call your district ADA coordinator at (641)421-0990. (If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942).

Clerk of the above Court

By: _____

Bremer County Courthouse
415 E. Bremer Avenue
Waverly, IA 50677

IMPORTANT

YOU ARE ADVISED TO SEEK LEGAL ADVICE AT ONCE TO PROTECT YOUR INTERESTS.

STATE OF IOWA JUDICIARY

Case No. LACV005874

County Bremer

Case Title MAUER VS ICON HEALTH & FITNESS ET AL

THIS CASE HAS BEEN FILED IN A COUNTY THAT USES ELECTRONIC FILING.
Therefore, unless the attached Petition and Original Notice contains a hearing date for your appearance, or unless you obtain an exemption from the court, you must file your Appearance and Answer electronically.

You must register through the Iowa Judicial Branch website at <http://www.iowacourts.state.ia.us/Efile> and obtain a log in and password for the purposes of filing and viewing documents on your case and of receiving service and notices from the court.

FOR GENERAL RULES AND INFORMATION ON ELECTRONIC FILING, REFER TO THE IOWA COURT RULES CHAPTER 16 PERTAINING TO THE USE OF THE ELECTRONIC DOCUMENT MANAGEMENT SYSTEM:
<http://www.iowacourts.state.ia.us/Efile>

FOR COURT RULES ON PROTECTION OF PERSONAL PRIVACY IN COURT FILINGS, REFER TO DIVISION VI OF IOWA COURT RULES CHAPTER 16: <http://www.iowacourts.state.ia.us/Efile>

Scheduled Hearing:

If you require the assistance of auxiliary aids or services to participate in court because of a disability, immediately call your district ADA coordinator at (841) 421-0990 . (If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942.)

Date Issued 01/05/2018 08:56:34 AM



District Clerk of Bremer
/s/ Prudence Ballweg

County

STATE OF IOWA JUDICIARY

Case No. LACV005874

County Bremer

Case Title MAUER VS ICON HEALTH & FITNESS ET AL

THIS CASE HAS BEEN FILED IN A COUNTY THAT USES ELECTRONIC FILING.
Therefore, unless the attached Petition and Original Notice contains a hearing date for your appearance, or unless you obtain an exemption from the court, you must file your Appearance and Answer electronically.

You must register through the Iowa Judicial Branch website at <http://www.iowacourts.state.ia.us/Efile> and obtain a log in and password for the purposes of filing and viewing documents on your case and of receiving service and notices from the court.

FOR GENERAL RULES AND INFORMATION ON ELECTRONIC FILING, REFER TO THE IOWA COURT RULES CHAPTER 16 PERTAINING TO THE USE OF THE ELECTRONIC DOCUMENT MANAGEMENT SYSTEM:
<http://www.iowacourts.state.ia.us/Efile>

FOR COURT RULES ON PROTECTION OF PERSONAL PRIVACY IN COURT FILINGS, REFER TO DIVISION VI OF IOWA COURT RULES CHAPTER 16: <http://www.iowacourts.state.ia.us/Efile>

Scheduled Hearing:

If you require the assistance of auxiliary aids or services to participate in court because of a disability, immediately call your district ADA coordinator at (641) 421-0990 . (If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942.)

Date Issued 01/05/2018 08:56:34 AM



District Clerk of Bremer

County

/s/ Prudence Ballweg

IOWA DISTRICT COURT IN AND FOR BREMER COUNTY

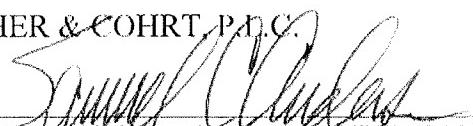
MARLENE MAUER,) Case No. LACV005874
vs.)
Plaintiff,) NOTIFICATION OF FILING
ICON HEALTH AND FITNESS, INC.;)
SEARS, ROEBUCK AND CO.)
a/k/a SEARS d/b/a SEARS CROSSROADS)
CENTER STORE #1072; AND SEARS)
HOME SERVICES, L.L.C.,)
Defendants.)

TO: Sears Home Services, LLC
The Corporation Trust Company
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801

You will take notice that an Original Notice of Suit is processed against you, a copy of which is attached hereto, was duly served upon you at Wilmington, DE by filing a copy of said notice of process on the 22nd day of January, 2018 with the Secretary of State of the State of Iowa.

Dated at Waterloo, Black Hawk County, Iowa on this 24th day of January, 2018.

Respectfully Submitted,

SWISHER & COHRT, P.A.C.
By: 
Samuel C. Anderson AT0000461
528 West 4th Street
P. O. Box 1200
Waterloo, IA 50704-1200
Telephone: (319) 232-6555
Facsimile: (319) 232-4835
E-mail: sanderson@s-c-law.com
Attorneys for Plaintiff

Original Filed.

IOWA
SECRETARY OF STATE

MARLENE MAUER

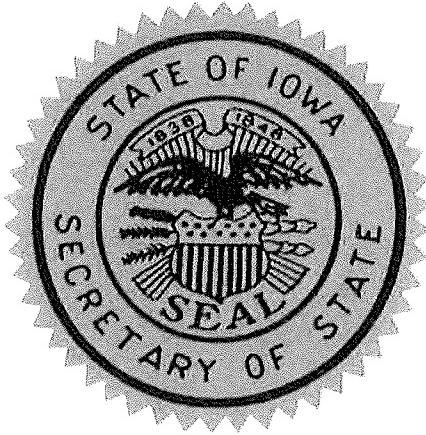
plaintiff(s)

vs.

ICON HEALTH AND FITNESS, INC.; SEARS, ROEBUCK
AND CO. a/k/a SEARS d/b/a SEARS CROSSROADS
CENTER STORE #1072; AND SEARS HOME
SERVICES, L.L.C.

defendant(s)

I, PAUL D. PATE, Secretary of State of the State of Iowa, do hereby certify that the attached Original Notice & Petition at Law were received and filed in the office of the Secretary of State at 10:00 am, January 22, 2018.



A handwritten signature in black ink that reads "Paul D. Pate".

PAUL D. PATE SECRETARY OF STATE

IOWA DISTRICT COURT IN AND FOR BREMER COUNTY

MARLENE MAUER,) Case No. LACV005874
)
 Plaintiff,)
) ORIGINAL NOTICE
 vs.)
)
 ICON HEALTH AND FITNESS, INC.;)
 SEARS, ROEBUCK AND CO.)
 a/k/a SEARS d/b/a SEARS CROSSROADS)
 CENTER STORE #1072; AND SEARS)
 HOME SERVICES, L.L.C.,)
)
 Defendants.)

TO THE ABOVE-NAMED THIRD-PARTY DEFENDANT: Sears Home Services, LLC

YOU ARE HEREBY NOTIFIED that a Petition has been filed in the office of the Clerk of this Court naming you as a Defendant in this action. A copy of the Petition is attached to this Notice. The attorney for the Plaintiff is Samuel C. Anderson, whose address is 528 West Fourth Street, P.O. Box 1200, Waterloo, Iowa 50704. The attorneys' telephone number (319) 232-6555, facsimile number (319) 232-4835.

You must serve a Motion or Answer within sixty (60) days following the filing of this Notice with the Secretary of State of the State of Iowa, and within a reasonable time thereafter, file your Motion or Answer with the Clerk of Court for Bremer County, at the County Courthouse located at 415 E. Bremer Avenue, Waverly, Iowa 50677. If you do not, judgment by default may be rendered against you for the relief demanded in the Petition.

If you require the assistance of auxiliary aids or services to participate in court because of a disability, immediately call your district ADA coordinator at (641)421-0990. (If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942).

Clerk of the above Court

By:

Bremer County Courthouse
415 E. Bremer Avenue
Waverly, IA 50677

IMPORTANT

YOU ARE ADVISED TO SEEK LEGAL ADVICE AT ONCE TO PROTECT YOUR INTERESTS.

STATE OF IOWA JUDICIARY

Case No LACV005874

County Bremer

Case Title MAUER VS ICON HEALTH & FITNESS ET AL

THIS CASE HAS BEEN FILED IN A COUNTY THAT USES ELECTRONIC FILING.
Therefore, unless the attached Petition and Original Notice contains a hearing date for your appearance, or unless you obtain an exemption from the court, you must file your Appearance and Answer electronically.

You must register through the Iowa Judicial Branch website at <http://www.iowacourts.state.ia.us/file> and obtain a log in and password for the purposes of filing and viewing documents on your case and of receiving service and notices from the court.

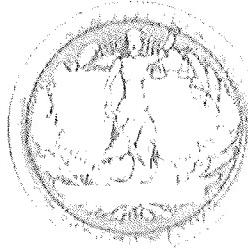
FOR GENERAL RULES AND INFORMATION ON ELECTRONIC FILING, REFER TO THE IOWA COURT RULES CHAPTER 16 PERTAINING TO THE USE OF THE ELECTRONIC DOCUMENT MANAGEMENT SYSTEM:
<http://www.iowacourts.state.ia.us/file>

FOR COURT RULES ON PROTECTION OF PERSONAL PRIVACY IN COURT FILINGS, REFER TO DIVISION VI OF IOWA COURT RULES CHAPTER 18: <http://www.iowacourts.state.ia.us/file>

Scheduled Hearing

If you require the assistance of auxiliary aids or services to participate in court because of a disability, immediately call your district ADA coordinator at (641) 421-0990 . (If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942)

Date Issued 01/05/2018 08:56:34 AM



District Clerk of Bremer

County

/s/ Prudence Ballweg

E-FILED 2018 JAN 05 7:43 AM BREMER - CLERK OF DISTRICT COURT

IOWA DISTRICT COURT IN AND FOR BREMER COUNTY

MARLENE MAUER,) Case No. LACV 005874
vs.)
Plaintiff,) PETITION AT LAW
ICON HEALTH AND FITNESS, INC.;)
SEARS, ROEBUCK AND CO.)
a/k/a SEARS AND SEARS CROSSROADS)
CENTER STORE #1072; AND SEARS)
HOME SERVICES, L.L.C.,)
Defendants.)

COMES NOW Plaintiff, Marlene Mauer, and for her cause of action against Defendants, Icon Health and Fitness, Inc.; Sears, Roebuck and Co. a/k/a Sears, d/b/a Sears Crossroads Center Store #1072; and Sears Home Services, L.L.C., states:

GENERAL ALLEGATIONS

1. Plaintiff, Marlene Mauer, is a resident of Denver, Bremer County, Iowa.
2. Defendant Icon Health and Fitness, Inc. is a Delaware corporation doing business in Iowa with its principal place of business in Logan, Utah.
3. Defendant Sears, Roebuck and Co. is a New York corporation registered to do business in the State of Iowa with its principal place of business in Hoffman Estates, Illinois.
4. Sears Crossroads Center store #1072 is a Sears Store owned by Sears, Roebuck and Co. and located in Waterloo, Black Hawk County, Iowa.
5. Sears Home Services, L.L.C. is a Delaware corporation wholly owned by Sears, Roebuck and Co. that provides services for the repair of products sold by Sears within the State of Iowa.

E-FILED 2018 JAN 05 7:43 AM BREMER - CLERK OF DISTRICT COURT

6. On May 28, 2015, Marlene Mauer purchased a Pro Form Cross Walk Fit 415 Treadmill Model SKU24H53.0; Serial No: FF740C10917 from Sears Crossroads Center store #1072.
7. The Pro Form Cross Walk Fit 415 Treadmill Model SKU24H53.0; Serial No: FF740C10917 was manufactured and marketed by ICON Health & Fitness, Inc.
8. On January 24, 2016, while Mrs. Mauer was walking on the treadmill at her home in Denver, Bremer County, Iowa, the treadmill suddenly, and without warning, sped up causing her to fall.
9. As a result of the fall Mrs. Mauer suffered personal injuries including, but not limited to, past and future pain and suffering, past and future medical bills, and past and future loss of function.
10. The damages suffered by Mrs. Mauer exceed the damage limitations of small claims court and are within the jurisdiction of the Iowa District Court.
11. Bremer County, Iowa, as the place of injury, is the appropriate venue for this claim.

COUNT I

ICON HEALTH & FITNESS, INC.

PRODUCTS LIABILITY

12. Plaintiff repleads her allegations set forth in paragraphs 1-11 of her Petition as if fully set forth herein.
13. ICON Health & Fitness, Inc. is in the business of manufacturing, selling, marketing, or otherwise distributing the Pro Form Cross Walk Fit 415 Treadmill Model SKU24H53.0; Serial No: FF740C10917.

E-FILED 2018 JAN 05 7:43 AM BREMER - CLERK OF DISTRICT COURT

14. At the time of the sale or distribution of the product, and at the time Plaintiff purchased the product, the product was defective in that:

- a. A manufacturing defect caused the treadmill to suddenly, and without warning, speed up creating a fall hazard.
- b. A manufacturing defect prevented the treadmill from stopping immediately upon treadmill malfunction creating a fall hazard.
- c. A design defect caused the treadmill to suddenly, and without warning, speed up creating a fall hazard.
- d. A design defect prevented the treadmill from stopping immediately upon treadmill malfunction creating a fall hazard.
- e. There was insufficient or improper inspection of the treadmill before putting it in the stream of commerce.
- f. There was no warning provided to the consumer that the treadmill might suddenly, and without warning, speed up causing a fall hazard.

15. As a result of the product defects Plaintiff suffered personal injury and damages.

16. At the time of suffering her injuries Plaintiff was using the Pro Form Cross Walk Fit 415 Treadmill for the purpose it was designed and manufactured.

17. Defendant ICON Health & Fitness, Inc. is liable to Plaintiff for manufacturing, selling, marketing, or otherwise distributing the Pro Form Cross Walk Fit 415 Treadmill in a defective condition.

WHEREFORE Plaintiff, Marlene Mauer, prays the Court to enter judgment against Defendant ICON Health & Fitness, Inc. in an amount sufficient to compensate her for her personal injuries and damages plus interest and costs as allowed by law.

E-FILED 2018 JAN 05 7:43 AM BREMER - CLERK OF DISTRICT COURT

COUNT II

ICON HEALTH & FITNESS, INC.

BREACH OF WARRANTY

18. Plaintiff repleads her allegations set forth in paragraphs 1-14 of her Petition as if fully set forth herein.
19. Because of the defects to the Pro Form Cross Walk Fit 415 Treadmill, the treadmill was not fit for the ordinary purpose for which the product was designed and manufactured to be used.
20. Defendant ICON Health & Fitness, Inc. breached its implied warranty regarding the merchantability of the treadmill.
21. As a result of the breach of warranty of merchantability Plaintiff suffered personal injury and damages.
22. Defendant ICON Health & Fitness, Inc. is liable to Plaintiff for manufacturing, setting, marketing, or otherwise distributing the Pro Form Cross Walk Fit 415 Treadmill in a defective condition that breached its warranty of merchantability.
WHEREFORE Plaintiff, Marlene Mauer, prays the Court to enter judgment against Defendant ICON Health & Fitness, Inc. in an amount sufficient to compensate her for her personal injuries and damages plus interest and costs as allowed by law.

COUNT III

ICON HEALTH & FITNESS, INC.

NEGLIGENCE

23. Plaintiff repleads her allegations set forth in paragraphs 1-14 of her Petition as if fully set forth herein

E-FILED 2018 JAN 05 7:43 AM BREMER - CLERK OF DISTRICT COURT

24. Defendant ICON Health & Fitness, Inc. was negligent in one or more of the following particulars:

- a. The design of the Pro Form Cross Walk Fit 415 Treadmill Model SKU24H53.0; Serial No: FF740C10917.
- b. The manufacture of the Pro Form Cross Walk Fit 415 Treadmill Model SKU24H53.0; Serial No: FF740C10917.
- c. The inspection of the Pro Form Cross Walk Fit 415 Treadmill Model SKU24H53.0; Serial No: FF740C10917.
- d. The provision of warnings concerning the Pro Form Cross Walk Fit 415 Treadmill Model SKU24H53.0; Serial No: FF740C10917.

25. As a result of the negligence of ICON Defendant Health & Fitness, Inc., Plaintiff suffered personal injury and damages.

WHEREFORE, Plaintiff, Marlene Mauer, prays the court to enter judgment against Defendant ICON Health & Fitness, Inc. in an amount sufficient to compensate her for her personal injuries and damages plus interest and costs as allowed by law.

COUNT IV

SEARS, ROEBUCK AND CO. A/K/A SEARS, D/B/A SEARS CROSSROADS
CENTER STORE #1072

PRODUCTS LIABILITY

26. Plaintiff repleads her allegations set forth in paragraphs 1-11 of her Petition as if fully set forth herein.

27. Sears, Roebuck and Co. a/k/a Sears, d/b/a Sears Crossroads Center Store #1072 is in the business of assembling, selling, marketing, or otherwise distributing the Pro

E-FILED 2018 JAN 05 7:43 AM BREMER - CLERK OF DISTRICT COURT

Form Cross Walk Fit 415 Treadmill Model SKU24HS3.0; Serial No:
FF740C10917.

28. At the time of the sale or distribution of the product, and at the time Plaintiff purchased the product, the product was defective because:

- a. A manufacturing defect caused the treadmill to suddenly, and without warning, speed up creating a fall hazard.
- b. A manufacturing defect prevented the treadmill from stopping immediately upon treadmill malfunction creating a fall hazard.
- c. A design defect caused the treadmill to suddenly, and without warning, speed up creating a fall hazard.
- d. A design defect prevented the treadmill from stopping immediately upon treadmill malfunction creating a fall hazard.
- e. There was insufficient or improper inspection of the treadmill before putting it in the stream of commerce.
- f. There was no warning provided to the consumer that the treadmill might suddenly, and without warning, speed up causing a fall hazard.
- g. There was insufficient or improper assembly of the treadmill before it was put into the stream of commerce.

29. As a result of the product defects Plaintiff suffered personal injury and damages.

30. At the time of suffering her injuries Plaintiff was using the Pro Form Cross Walk Fit 415 Treadmill for the purpose it was designed and manufactured.

E-FILED 2018 JAN 05 7:43 AM BREMER - CLERK OF DISTRICT COURT

31. Defendant Sears, Roebuck and Co. a/k/a Sears, d/b/a Sears Crossroads Center Store #1072 is liable to Plaintiff for assembling, selling, marketing, or otherwise distributing the Pro Form Cross Walk Fit 415 Treadmill in a defective condition.
WHEREFORE Plaintiff, Marlene Mauer, prays the court to enter judgment against Defendant Sears, Roebuck and Co. a/k/a Sears, d/b/a Sears Crossroads Center Store #1072 in an amount sufficient to compensate her for her personal injuries and damages plus interest and costs as allowed by law.

COUNT V

SEARS, ROEBUCK AND CO. A/K/A SEARS, D/B/A SEARS CROSSROADS
CENTER STORE #1072

BREACH OF WARRANTY

32. Plaintiff repleads her allegations set forth in paragraphs 1-11 of her Petition as if fully set forth herein.
33. Sears, Roebuck and Co. a/k/a Sears, d/b/a Sears Crossroads Center Store #1072 is in the business of assembling, selling, marketing, or otherwise distributing the Pro Form Cross Walk Fit 415 Treadmill Model SKU24H53.0; Serial No: FF740C10917.

34. At the time of the sale or distribution of the product, and at the time Plaintiff purchased, the product the product was defective because:

- a. A manufacturing defect caused the treadmill to suddenly, and without warning, speed up creating a fall hazard.
- b. A manufacturing defect prevented the treadmill from stopping immediately upon treadmill malfunction creating a fall hazard.

E-FILED 2018 JAN 05 7:43 AM BREMER - CLERK OF DISTRICT COURT

- c. A design defect caused the treadmill to suddenly, and without warning, speed up creating a fall hazard.
- d. A design defect prevented the treadmill from stopping immediately upon treadmill malfunction creating a fall hazard.
- e. There was insufficient or improper inspection of the treadmill before putting it in the stream of commerce.
- f. There was no warning provided to the consumer that the treadmill might suddenly, and without warning, speed up causing a fall hazard.
- g. There was insufficient or improper assembly of the treadmill before it was put into the stream of commerce.

35. Because of the defects to the Pro Form Cross Walk Fit 415 Treadmill at the time of purchase by Plaintiff, the treadmill was not fit for the ordinary purpose for which the product was designed and manufactured to be used and Defendant, Sears, Roebuck and Co. a/k/a Sears, d/b/a Sears Crossroads Center Store #1072, breached its implied warranty regarding the merchantability of the treadmill.

36. At the time of sale of the Pro Form Cross Walk Fit 415 Treadmill Defendant, Sears, Roebuck and Co. a/k/a Sears, d/b/a Sears Crossroads Center Store #1072, knew of the particular purpose for which Plaintiff purchased the treadmill, specifically for the use by her and her husband as a treadmill for exercise.

37. At the time of sale of the Pro Form Cross Walk Fit 415 Treadmill Defendant, Sears, Roebuck and Co. a/k/a Sears, d/b/a Sears Crossroads Center Store #1072, knew that Plaintiff was relying on Defendant's skill or judgment to select or furnish suitable goods.

E-FILED 2018 JAN 05 7:43 AM BREMER - CLERK OF DISTRICT COURT

38. The product was not fit for the particular purpose for which Plaintiff purchased the product.

39. As a result of the breach of warranties of merchantability and for fitness for a particular purpose Plaintiff suffered personal injury and damages.

40. Defendant, Sears, Roebuck and Co. a/k/a Sears, d/b/a Sears Crossroads Center Store #1072, is liable to Plaintiff for assembling, selling, marketing, or otherwise distributing the Pro Form Cross Walk Fit 415 Treadmill in a defective condition that breached its warranties of merchantability and of fitness for a particular purpose.

WHEREFORE Plaintiff, Marlene Mauer, prays the court to enter judgment against Defendant Sears, Roebuck and Co. a/k/a Sears, d/b/a Sears Crossroads Center Store #1072 in an amount sufficient to compensate her for her personal injuries and damages plus interest and costs as allowed by law.

COUNT VI

SEARS, ROEBUCK AND CO. A/K/A SEARS, D/B/A SEARS CROSSROADS
CENTER STORE #1072

NEGLIGENCE

41. Plaintiff repleads her allegations set forth in paragraphs 1-11 of her Petition as if fully set forth herein.

42. Sears, Roebuck and Co. a/k/a Sears, d/b/a Sears Crossroads Center Store #1072 is in the business of assembling, selling, marketing, or otherwise distributing the Pro Form Cross Walk Fit 415 Treadmill Model SKU24H53.0; Serial No: FF740C10917.

(a)(1)

E-FILED 2018 JAN 05 7:43 AM BREMER - CLERK OF DISTRICT COURT

43. At the time of the sale or distribution of the product, and at the time Plaintiff purchased, the product the product was defective because:

- a. A manufacturing defect caused the treadmill to suddenly, and without warning, speed up creating a fall hazard.
- b. A manufacturing defect prevented the treadmill from stopping immediately upon treadmill malfunction creating a fall hazard.
- c. A design defect caused the treadmill to suddenly, and without warning, speed up creating a fall hazard.
- d. A design defect prevented the treadmill from stopping immediately upon treadmill malfunction creating a fall hazard.
- e. There was insufficient or improper inspection of the treadmill before putting it in the stream of commerce.
- f. There was no warning provided to the consumer that the treadmill might suddenly, and without warning, speed up causing a fall hazard.
- g. There was insufficient or improper assembly of the treadmill before it was put into the stream of commerce.

44. Defendant Sears, Roebuck and Co. a/k/a Sears, d/b/a Sears Crossroads Center

Store #1072 was negligent in one or more of the following particulars:

- a. The improper assembly of the Pro Form Cross Walk Fit 415 Treadmill Model SKU24H53.0; Serial No: FF740C10917.
- b. The improper inspection of the Pro Form Cross Walk Fit 415 Treadmill Model SKU24H53.0; Serial No: FF740C10917.

E-FILED 2018 JAN 05 7:43 AM BREMER - CLERK OF DISTRICT COURT

c. The failure to provide appropriate warnings concerning the Pro Form Cross Walk Fit 415 Treadmill Model SKU24H53.0; Serial No: FF740C10917.

d. Selling a product they knew or should have known was defectively designed or manufactured.

e. Selling a product that they knew or should have known had defective warnings.

45. As a result of the negligence of Defendant Sears, Roebuck and Co. a/k/a Sears, d/b/a Sears Crossroads Center Store #1072, Plaintiff suffered personal injury and damages.

WHEREFORE Plaintiff, Marlene Mauer, prays the court to enter judgment against Defendant Sears, Roebuck and Co. a/k/a Sears, d/b/a Sears Crossroads Center Store #1072 in an amount sufficient to compensate her for her personal injuries and damages plus interest and costs as allowed by law.

COUNT VII

SEARS HOME SERVICES, L.L.C.

NEGLIGENCE

46. Plaintiff repleads her allegations set forth in paragraphs 1-ii of her Petition as if fully set forth herein.

47. Defendant Sears Home Services, L.L.C., is in the business of servicing and repairing products sold by Defendant Sears, Roebuck and Co. a/k/a Sears, d/b/a Sears Crossroads Center Store #1072, including but not limited to, the Pro Form Cross Walk Fit 415 Treadmill Model SKU24H53.0.

E-FILED 2018 JAN 05 7:43 AM BREMER - CLERK OF DISTRICT COURT

48. On June 16, 2015, Sears Home Services, L.L.C. made a service call to Plaintiff's home after the treadmill unexpectedly sped up causing Plaintiff to fall from the treadmill.

49. Defendant, Sears Home Services, L.L.C., was negligent in the repairs made on June 16, 2015.

50. The negligence of Defendant Sears Home Services, L.L.C., in performing the repairs on June 16, 2015, was a cause of the treadmill unexpectedly speeding up on January 24, 2016.

51. As a result of the negligence of Defendant Sears Home Services, L.L.C., Plaintiff suffered personal injury and damages.

WHEREFORE Plaintiff, Marlene Mauer, prays the court to enter judgment against Defendant Sears Home Services, L.L.C. in an amount sufficient to compensate her for her personal injuries and damages plus interest and costs as allowed by law.

Respectfully Submitted,

SWISHER & COHRT, P.L.L.C.

By: /s/ Samuel C. Anderson
Samuel C. Anderson (IA000006)
528 West 4th Street
P. O. Box 1200
Waterloo, IA 50704-1200
Telephone: (319) 232-6555
Facsimile: (319) 232-4835
E-mail: sanderson@swc-law.com
Attorneys for Plaintiff

Original Filed.

IOWA DISTRICT COURT IN AND FOR BREMER COUNTY

MARLENE MAUER,) Case No. LACV005874
vs.)
Plaintiff,) NOTIFICATION OF FILING
ICON HEALTH AND FITNESS, INC.;)
SEARS, ROEBUCK AND CO.)
a/k/a SEARS d/b/a SEARS CROSSROADS)
CENTER STORE #1072; AND SEARS)
HOME SERVICES, L.L.C.,)
Defendants.)

TO: ICON Health & Fitness, Inc.
The Corporation Trust Company
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801

You will take notice that an Original Notice of Suit is processed against you, a copy of which is attached hereto, was duly served upon you at Wilmington, DE by filing a copy of said notice of process on the 22nd day of January, 2018 with the Secretary of State of the State of Iowa.

Dated at Waterloo, Black Hawk County, Iowa on this 24th day of January, 2018.

Respectfully Submitted,

SWISHER & COHRT, P.A.
By: 
Samuel C. Anderson AT0000461
528 West 4th Street
P. O. Box 1200
Waterloo, IA 50704-1200
Telephone: (319) 232-6555
Facsimile: (319) 232-4835
E-mail: sanderson@s-c-law.com
Attorneys for Plaintiff

Original Filed.

IOWA
SECRETARY OF STATE

MARLENE MAUER

plaintiff(s)

vs.

ICON HEALTH AND FITNESS, INC.; SEARS, ROEBUCK
AND CO. a/k/a SEARS d/b/a SEARS CROSSROADS
CENTER STORE #1072; AND SEARS HOME
SERVICES, L.L.C.

defendant(s)

I, PAUL D. PATE, Secretary of State of the State of Iowa, do hereby certify that the attached Original Notice & Petition at Law were received and filed in the office of the Secretary of State at 10:00 am, January 22, 2018.



Paul D. Pate

PAUL D. PATE SECRETARY OF STATE

IOWA DISTRICT COURT IN AND FOR BREMER COUNTY

MARLENE MAUER,)	Case No. LACV005874	
)		
Plaintiff,)	ORIGINAL NOTICE	
)		
vs.)		
)		
ICON HEALTH AND FITNESS, INC.;)		
SEARS, ROEBUCK AND CO.)		
a/k/a SEARS d/b/a SEARS CROSSROADS)		
CENTER STORE #1072; AND SEARS)		
HOME SERVICES, L.L.C.,)		
)		
Defendants.)		

TO THE ABOVE-NAMED THIRD-PARTY DEFENDANT: ICON Health & Fitness, Inc.

YOU ARE HEREBY NOTIFIED that a Petition has been filed in the office of the Clerk of this Court naming you as a Defendant in this action. A copy of the Petition is attached to this Notice. The attorney for the Plaintiff is Samuel C. Anderson, whose address is 528 West Fourth Street, P.O. Box 1200, Waterloo, Iowa 50704. The attorneys' telephone number (319) 232-6555, facsimile number (319) 232-4835.

You must serve a Motion or Answer within sixty (60) days following the filing of this Notice with the Secretary of State of the State of Iowa, and within a reasonable time thereafter, file your Motion or Answer with the Clerk of Court for Bremer County, at the County Courthouse located at 415 E. Bremer Avenue, Waverly, Iowa 50677. If you do not, judgment by default may be rendered against you for the relief demanded in the Petition.

If you require the assistance of auxiliary aids or services to participate in court because of a disability, immediately call your district ADA coordinator at (641)421-0990. (If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942).

Clerk of the above Court

By: _____
Bremer County Courthouse
415 E. Bremer Avenue
Waverly, IA 50677

IMPORTANT

YOU ARE ADVISED TO SEEK LEGAL ADVICE AT ONCE TO PROTECT YOUR INTERESTS.

STATE OF IOWA JUDICIARY

Case No. LACV005874

County Bremer

Case Title MAUER VS ICON HEALTH & FITNESS ET AL

THIS CASE HAS BEEN FILED IN A COUNTY THAT USES ELECTRONIC FILING.
Therefore, unless the attached Petition and Original Notice contains a hearing date for your appearance, or unless you obtain an exemption from the court, you must file your Appearance and Answer electronically

You must register through the Iowa Judicial Branch website at <http://www.iowacourts.state.ia.us/Efile> and obtain a log in and password for the purposes of filing and viewing documents on your case and of receiving service and notices from the court.

FOR GENERAL RULES AND INFORMATION ON ELECTRONIC FILING, REFER TO THE IOWA COURT RULES CHAPTER 16 PERTAINING TO THE USE OF THE ELECTRONIC DOCUMENT MANAGEMENT SYSTEM:
<http://www.iowacourts.state.ia.us/Efile>

FOR COURT RULES ON PROTECTION OF PERSONAL PRIVACY IN COURT FILINGS, REFER TO DIVISION VI OF IOWA COURT RULES CHAPTER 16: <http://www.iowacourts.state.ia.us/Efile>

Scheduled Hearing:

If you require the assistance of auxiliary aids or services to participate in court because of a disability, immediately call your district ADA coordinator at **(641) 421-0990** (If you are hearing impaired, call Relay Iowa TTY at **1-800-735-2942**)

Date Issued 01/05/2018 08:56:34 AM



District Clerk of Bremer

/s/ Prudence Ballweg

County

IOWA DISTRICT COURT IN AND FOR BREMER COUNTY

MARLENE MAUER,)	Case No. LACV 005874	
)		
Plaintiff,)	PETITION AT LAW	
)		
vs.)		
)		
ICON HEALTH AND FITNESS, INC.,)		
SEARS, ROEBUCK AND CO.)		
a/k/a SEARS d/b/a SEARS CROSSROADS)		
CENTER STORE #1072; AND SEARS)		
HOME SERVICES, L.L.C.,)		
)		
Defendants.)		

COMES NOW Plaintiff, Marlene Mauer, and for her cause of action against Defendants, Icon Health and Fitness, Inc.; Sears, Roebuck and Co. a/k/a Sears, d/b/a Sears Crossroads Center Store #1072; and Sears Home Services, L.L.C., states:

GENERAL ALLEGATIONS

1. Plaintiff, Marlene Mauer, is a resident of Denver, Bremer County, Iowa.
2. Defendant Icon Health and Fitness, Inc. is a Delaware corporation doing business in Iowa with its principal place of business in Logan, Utah.
3. Defendant Sears, Roebuck and Co. is a New York corporation registered to do business in the State of Iowa with its principal place of business in Hoffman Estates, Illinois.
4. Sears Crossroads Center store #1072 is a Sears Store owned by Sears, Roebuck and Co. and located in Waterloo, Black Hawk County, Iowa.
5. Sears Home Services, L.L.C. is a Delaware corporation wholly owned by Sears, Roebuck and Co. that provides services for the repair of products sold by Sears within the State of Iowa.

6. On May 28, 2015, Marlene Mauer purchased a Pro Form Cross Walk Fit 415 Treadmill Model SKU24H53.0; Serial No: FF740C10917 from Sears Crossroads Center store #1072.
7. The Pro Form Cross Walk Fit 415 Treadmill Model SKU24H53.0; Serial No: FF740C10917 was manufactured and marketed by ICON Health & Fitness, Inc.
8. On January 24, 2016, while Mrs. Mauer was walking on the treadmill at her home in Denver, Bremer County, Iowa, the treadmill suddenly, and without warning, sped up causing her to fall.
9. As a result of the fall Mrs. Mauer suffered personal injuries including, but not limited to, past and future pain and suffering, past and future medical bills, and past and future loss of function.
10. The damages suffered by Mrs. Mauer exceed the damage limitations of small claims court and are within the jurisdiction of the Iowa District Court.
11. Bremer County, Iowa, as the place of injury, is the appropriate venue for this claim.

COUNT I

ICON HEALTH & FITNESS, INC.

PRODUCTS LIABILITY

12. Plaintiff repleads her allegations set forth in paragraphs 1-11 of her Petition as if fully set forth herein.
13. ICON Health & Fitness, Inc. is in the business of manufacturing, selling, marketing, or otherwise distributing the Pro Form Cross Walk Fit 415 Treadmill Model SKU24H53.0; Serial No: FF740C10917.

14. At the time of the sale or distribution of the product, and at the time Plaintiff purchased the product, the product was defective in that:

- a. A manufacturing defect caused the treadmill to suddenly, and without warning, speed up creating a fall hazard.
- b. A manufacturing defect prevented the treadmill from stopping immediately upon treadmill malfunction creating a fall hazard.
- c. A design defect caused the treadmill to suddenly, and without warning, speed up creating a fall hazard.
- d. A design defect prevented the treadmill from stopping immediately upon treadmill malfunction creating a fall hazard.
- e. There was insufficient or improper inspection of the treadmill before putting it in the stream of commerce.
- f. There was no warning provided to the consumer that the treadmill might suddenly, and without warning, speed up causing a fall hazard.

15. As a result of the product defects Plaintiff suffered personal injury and damages.

16. At the time of suffering her injuries Plaintiff was using the Pro Form Cross Walk Fit 415 Treadmill for the purpose it was designed and manufactured.

17. Defendant ICON Health & Fitness, Inc. is liable to Plaintiff for manufacturing, selling, marketing, or otherwise distributing the Pro Form Cross Walk Fit 415 Treadmill in a defective condition.

WHEREFORE Plaintiff, Marlene Mauer, prays the Court to enter judgment against Defendant ICON Health & Fitness, Inc. in an amount sufficient to compensate her for her personal injuries and damages plus interest and costs as allowed by law.

COUNT II

ICON HEALTH & FITNESS, INC.

BREACH OF WARRANTY

18. Plaintiff repleads her allegations set forth in paragraphs 1-14 of her Petition as if fully set forth herein.
19. Because of the defects to the Pro Form Cross Walk Fit 415 Treadmill, the treadmill was not fit for the ordinary purpose for which the product was designed and manufactured to be used.
20. Defendant ICON Health & Fitness, Inc. breached its implied warranty regarding the merchantability of the treadmill.
21. As a result of the breach of warranty of merchantability Plaintiff suffered personal injury and damages.
22. Defendant ICON Health & Fitness, Inc. is liable to Plaintiff for manufacturing, selling, marketing, or otherwise distributing the Pro Form Cross Walk Fit 415 Treadmill in a defective condition that breached its warranty of merchantability.
WHEREFORE Plaintiff, Marlene Mauer, prays the Court to enter judgment against Defendant ICON Health & Fitness, Inc. in an amount sufficient to compensate her for her personal injuries and damages plus interest and costs as allowed by law.

COUNT III

ICON HEALTH & FITNESS, INC.

NEGLIGENCE

23. Plaintiff repleads her allegations set forth in paragraphs 1-14 of her Petition as if fully set forth herein.

24. Defendant ICON Health & Fitness, Inc. was negligent in one or more of the following particulars:

- a. The design of the Pro Form Cross Walk Fit 415 Treadmill Model SKU24H53.0; Serial No: FF740C10917.
- b. The manufacture of the Pro Form Cross Walk Fit 415 Treadmill Model SKU24H53.0; Serial No: FF740C10917.
- c. The inspection of the Pro Form Cross Walk Fit 415 Treadmill Model SKU24H53.0; Serial No: FF740C10917.
- d. The provision of warnings concerning the Pro Form Cross Walk Fit 415 Treadmill Model SKU24H53.0; Serial No: FF740C10917.

25. As a result of the negligence of ICON Defendant Health & Fitness, Inc., Plaintiff suffered personal injury and damages.

WHEREFORE Plaintiff, Marlene Mauer, prays the court to enter judgment against Defendant ICON Health & Fitness, Inc. in an amount sufficient to compensate her for her personal injuries and damages plus interest and costs as allowed by law.

COUNT IV

SEARS, ROEBUCK AND CO. A/K/A SEARS, D/B/A SEARS CROSSROADS
CENTER STORE #1072

PRODUCTS LIABILITY

26. Plaintiff repleads her allegations set forth in paragraphs 1-11 of her Petition as if fully set forth herein.

27. Sears, Roebuck and Co. a/k/a Sears, d/b/a Sears Crossroads Center Store #1072 is in the business of assembling, selling, marketing, or otherwise distributing the Pro

Form Cross Walk Fit 415 Treadmill Model SKU24H53.0; Serial No:

FF740C10917.

28. At the time of the sale or distribution of the product, and at the time Plaintiff purchased the product, the product was defective because:

- a. A manufacturing defect caused the treadmill to suddenly, and without warning, speed up creating a fall hazard.
- b. A manufacturing defect prevented the treadmill from stopping immediately upon treadmill malfunction creating a fall hazard.
- c. A design defect caused the treadmill to suddenly, and without warning, speed up creating a fall hazard.
- d. A design defect prevented the treadmill from stopping immediately upon treadmill malfunction creating a fall hazard.
- e. There was insufficient or improper inspection of the treadmill before putting it in the stream of commerce.
- f. There was no warning provided to the consumer that the treadmill might suddenly, and without warning, speed up causing a fall hazard.
- g. There was insufficient or improper assembly of the treadmill before it was put into the stream of commerce.

29. As a result of the product defects Plaintiff suffered personal injury and damages.

30. At the time of suffering her injuries Plaintiff was using the Pro Form Cross Walk Fit 415 Treadmill for the purpose it was designed and manufactured.

31. Defendant Sears, Roebuck and Co. a/k/a Sears, d/b/a Sears Crossroads Center Store #1072 is liable to Plaintiff for assembling, selling, marketing, or otherwise distributing the Pro Form Cross Walk Fit 415 Treadmill in a defective condition. WHEREFORE Plaintiff, Marlene Mauer, prays the court to enter judgment against Defendant Sears, Roebuck and Co. a/k/a Sears, d/b/a Sears Crossroads Center Store #1072 in an amount sufficient to compensate her for her personal injuries and damages plus interest and costs as allowed by law.

COUNT V

SEARS, ROEBUCK AND CO. A/K/A SEARS, D/B/A SEARS CROSSROADS
CENTER STORE #1072

BREACH OF WARRANTY

32. Plaintiff repleads her allegations set forth in paragraphs 1-11 of her Petition as if fully set forth herein.

33. Sears, Roebuck and Co. a/k/a Sears, d/b/a Sears Crossroads Center Store #1072 is in the business of assembling, selling, marketing, or otherwise distributing the Pro Form Cross Walk Fit 415 Treadmill Model SKU24H53.0; Serial No: FF740C10917.

34. At the time of the sale or distribution of the product, and at the time Plaintiff purchased, the product the product was defective because:

- a. A manufacturing defect caused the treadmill to suddenly, and without warning, speed up creating a fall hazard.
- b. A manufacturing defect prevented the treadmill from stopping immediately upon treadmill malfunction creating a fall hazard.

- c. A design defect caused the treadmill to suddenly, and without warning, speed up creating a fall hazard.
- d. A design defect prevented the treadmill from stopping immediately upon treadmill malfunction creating a fall hazard.
- e. There was insufficient or improper inspection of the treadmill before putting it in the stream of commerce.
- f. There was no warning provided to the consumer that the treadmill might suddenly, and without warning, speed up causing a fall hazard.
- g. There was insufficient or improper assembly of the treadmill before it was put into the stream of commerce.

35. Because of the defects to the Pro Form Cross Walk Fit 415 Treadmill at the time of purchase by Plaintiff, the treadmill was not fit for the ordinary purpose for which the product was designed and manufactured to be used and Defendant, Sears, Roebuck and Co. a/k/a Sears, d/b/a Sears Crossroads Center Store #1072, breached its implied warranty regarding the merchantability of the treadmill.

36. At the time of sale of the Pro Form Cross Walk Fit 415 Treadmill Defendant, Sears, Roebuck and Co. a/k/a Sears, d/b/a Sears Crossroads Center Store #1072, knew of the particular purpose for which Plaintiff purchased the treadmill, specifically for the use by her and her husband as a treadmill for exercise.

37. At the time of sale of the Pro Form Cross Walk Fit 415 Treadmill Defendant, Sears, Roebuck and Co. a/k/a Sears, d/b/a Sears Crossroads Center Store #1072, knew that Plaintiff was relying on Defendant's skill or judgment to select or furnish suitable goods.

38. The product was not fit for the particular purpose for which Plaintiff purchased the product.
39. As a result of the breach of warranties of merchantability and for fitness for a particular purpose Plaintiff suffered personal injury and damages.
40. Defendant, Sears, Roebuck and Co. a/k/a Sears, d/b/a Sears Crossroads Center Store #1072, is liable to Plaintiff for assembling, selling, marketing, or otherwise distributing the Pro Form Cross Walk Fit 415 Treadmill in a defective condition that breached its warranties of merchantability and of fitness for a particular purpose.

WHEREFORE Plaintiff, Marlene Mauer, prays the court to enter judgment against Defendant Sears, Roebuck and Co. a/k/a Sears, d/b/a Sears Crossroads Center Store #1072 in an amount sufficient to compensate her for her personal injuries and damages plus interest and costs as allowed by law.

COUNT VI

SEARS, ROEBUCK AND CO. A/K/A SEARS, D/B/A SEARS CROSSROADS
CENTER STORE #1072

NEGLIGENCE

41. Plaintiff repleads her allegations set forth in paragraphs 1-11 of her Petition as if fully set forth herein.
42. Sears, Roebuck and Co. a/k/a Sears, d/b/a Sears Crossroads Center Store #1072 is in the business of assembling, selling, marketing, or otherwise distributing the Pro Form Cross Walk Fit 415 Treadmill Model SKU24H53.0; Serial No: FF740C10917.

43. At the time of the sale or distribution of the product, and at the time Plaintiff purchased, the product the product was defective because:

- a. A manufacturing defect caused the treadmill to suddenly, and without warning, speed up creating a fall hazard.
- b. A manufacturing defect prevented the treadmill from stopping immediately upon treadmill malfunction creating a fall hazard.
- c. A design defect caused the treadmill to suddenly, and without warning, speed up creating a fall hazard.
- d. A design defect prevented the treadmill from stopping immediately upon treadmill malfunction creating a fall hazard.
- e. There was insufficient or improper inspection of the treadmill before putting it in the stream of commerce.
- f. There was no warning provided to the consumer that the treadmill might suddenly, and without warning, speed up causing a fall hazard.
- g. There was insufficient or improper assembly of the treadmill before it was put into the stream of commerce.

44. Defendant Sears, Roebuck and Co. a/k/a Sears, d/b/a Sears Crossroads Center Store #1072 was negligent in one or more of the following particulars:

- a. The improper assembly of the Pro Form Cross Walk Fit 415 Treadmill Model SKU24H53.0; Serial No: FF740C10917.
- b. The improper inspection of the Pro Form Cross Walk Fit 415 Treadmill Model SKU24H53.0; Serial No: FF740C10917.

c. The failure to provide appropriate warnings concerning the Pro Form

Cross Walk Fit 415 Treadmill Model SKU24HS3.0; Serial No:

FF740C10917.

d. Selling a product they knew or should have known was defectively

designed or manufactured.

e. Selling a product that they knew or should have known had defective

warnings.

45. As a result of the negligence of Defendant Sears, Roebuck and Co. a/k/a Sears,

d/b/a Sears Crossroads Center Store #1072, Plaintiff suffered personal injury and

damages.

WHEREFORE Plaintiff, Marlene Mauer, prays the court to enter judgment against

Defendant Sears, Roebuck and Co. a/k/a Sears, d/b/a Sears Crossroads Center Store

#1072 in an amount sufficient to compensate her for her personal injuries and

damages plus interest and costs as allowed by law.

COUNT VII

SEARS HOME SERVICES, L.L.C.

NEGLIGENCE

46. Plaintiff repleads her allegations set forth in paragraphs 1-11 of her Petition as if

fully set forth herein.

47. Defendant Sears Home Services, L.L.C., is in the business of servicing and

repairing products sold by Defendant Sears, Roebuck and Co. a/k/a Sears, d/b/a

Sears Crossroads Center Store #1072, including but not limited to, the Pro Form

Cross Walk Fit 415 Treadmill Model SKU24HS3.0.

48. On June 16, 2015, Sears Home Services, L.L.C. made a service call to Plaintiff's home after the treadmill unexpectedly sped up causing Plaintiff to fall from the treadmill.

49. Defendant, Sears Home Services, L.L.C., was negligent in the repairs made on June 16, 2015.

50. The negligence of Defendant Sears Home Services, L.L.C., in performing the repairs on June 16, 2015, was a cause of the treadmill unexpectedly speeding up on January 24, 2016.

51. As a result of the negligence of Defendant Sears Home Services, L.L.C., Plaintiff suffered personal injury and damages.

WHEREFORE Plaintiff, Marlene Mauer, prays the court to enter judgment against Defendant Sears Home Services, L.L.C. in an amount sufficient to compensate her for her personal injuries and damages plus interest and costs as allowed by law.

Respectfully Submitted,

SWISHER & COHRT, P.L.C.

By: 
Samuel C. Anderson AT0000461
528 West 4th Street
P. O. Box 1200
Waterloo, IA 50704-1200
Telephone: (319) 232-6555
Facsimile: (319) 232-4835
E-mail: sanderson@sw-co-law.com
Attorneys for Plaintiff

Original Filed.

IOWA DISTRICT COURT IN AND FOR BREMER COUNTY

MARLENE MAUER,)	Case No. LACV005874
)	
Plaintiff,)	
)	617.3 AFFIDAVIT OF SERVICE
vs.)	
)	
ICON HEALTH AND FITNESS, INC.,)	
SEARS, ROEBUCK AND CO.)	
a/k/a SEARS d/b/a SEARS CROSSROADS)	
CENTER STORE #1072; AND SEARS)	
HOME SERVICES, L.L.C.,)	
)	
Defendants.)	
STATE OF IOWA)	
)ss.	
COUNTY OF BLACK HAWK)	

I, Samuel C. Anderson, being first duly sworn on oath do depose and state that the enclosed Original Notice and Petition at Law was served upon the Iowa Secretary of State pursuant to Iowa Code §617.3. Pursuant to the Secretary of State's Certificate filed with this Affidavit, the Secretary of State received the Original Notice and Petition at 10:00 a.m. January 22, 2018. On January 24, 2018, the undersigned mailed to Defendants, Sears Home Services, LLC and ICON Health & Fitness, Inc. by certified mail at the addresses of The Corporation Trust company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801 a copy of the file-stamped Original Notice, Petition, and Certificate of Receipt of Service by the Iowa Secretary of State in compliance with Iowa Code §617.3.

The above is true as I verily believe.

Dated this 24th day of January, 2018.

Swisher & Cohrt, PLC



Samuel C. Anderson

Subscribed and sworn to before me on this 24th day of January, 2018.



Kristine Waschner
Notary Public in and for the State of Iowa.

